IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE KURIAN JOSEPH

FRIDAY, THE 30TH NOVEMBER 2007 / 9TH AGRAHAYANA 1929

WP(C).No. 26354 of 2004(K)

PETITIONER:

O.V. JAMES, OTHIRAKUNDISSUNKAL
P.O. NEDUNGOME, CHUNDAPARAMBA,
SREEKANDAPURAM, KANNUR DISTRICT.

BY ADV. SRI.H.BADARUDDIN
SRI.C.A.JOSEPH

RESPONDENTS:

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1. THE DIRECTOR, CENTRAL STATE FARM,
ARALAM, P.O. ARALAM FARM, (VIA) PERAVOOR,
KANNUR DISTRICT.

2. THE INDUSTRIAL TRIBUNAL, KOZHIKODE.

BY ADV. SRI.U.K.RAMAKRISHNAN
SRI.E.K.MADHAVAN
SRI.P.V.LOHITHAKSHAN
SMT.P.VIJAYAMMA
SMT.UMA GOPINATH
SRI.SANDEEP.E.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 30/11/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.P.(C) NO.26354/04

A P P E N D I X

PETITIONER'S EXHIBITS :

EXT.P1 : TRUE COPY OF LETTER NO.CSE/CAN/PF/313/81/1623 DT. 2.12.2000 WITH COPY OF ORDER IN APPEAL DATED 19.7.1999.

EXT.P2 : TRUE COPY OF JUDGMENT DT. 9.4.2001 IN O.P.NO.8452/01 OF THIS HON'BLE COURT.

EXT.P3 : TRUE COPY OF AWARD IN I.D.58/02 DT. 8.6.2004 PASSED BY THE LEARNED INDUSTRIAL TRIBUNAL.

KURIAN JOSEPH J.

Writ Petition (Civil) No.26354 of 2004

Dated 30th November, 2007.

J U D G M E N T

Petitioner is aggrieved since he is denied backwages from 31.7.1997 to 12.9.2001, as per the award in I.D.58/02 on the file of the Industrial Tribunal, Kozhikode. It is seen from the award itself that only having regard to the peculiar facts and circumstances of the case, particularly the fact of proven misconduct against the petitioner, the Tribunal passed such an award, in exercise of its power under Section 11A of the Industrial Disputes Act, 1947. The Tribunal has also stated in the award that there was no proper explanation available for the workman for sleeping over the matter from 31.10.1997 to 12.9.2001. In the recent decision of the Supreme Court in **U.P.S.R.T. Corporation v. Mitthu Singh** (2006(3) LLJ 778) it has been held that when power under Section 11A is exercised, the grant of backwages in the event of reinstatement is not automatic. It depends on the facts and circumstances of each case. Having regard to the facts and circumstances of the case, whereby the petitioner was not vigilant in prosecuting the case for the period referred to above,

the Tribunal refused to grant the back wages, clarifying further that the period need not be considered for any service benefits. However, the period of unauthorised absence has been reckoned for the purpose of continuity of service. In the facts and circumstances, it cannot be said that the award is perverse or unreasonable. There is no merit in the writ petition. It is dismissed.

KURIAN JOSEPH, JUDGE.

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